

Post-Legislative Scrutiny of the Law on the Prohibition of Discrimination Against Persons with Disabilities

Report Summary

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Summary

On its path to accession to the European Union (EU), Montenegro has significantly amended its legislation with a view to aligning it with European and international standards and putting in place a legislative framework for the protection of human rights and freedoms. The general assessment of relevant organizations and international institutions is that Montenegro's legislation is basically good and that in the period ahead special attention should be devoted to improving the implementation of legal provisions in practice.

In view of the importance of the implementation of laws dealing with the protection of the rights of persons with disabilities, as well as of the fact that over the past ten years in its work the Committee on Human Rights and Freedoms of the Parliament of Montenegro has, among other, focused on the protection of the rights of the child, as part of post-legislative scrutiny an analysis was undertaken of the implementation of the **Law on the Prohibition of Discrimination against Persons with Disabilities** with particular emphasis on **Article 21 of this Law –Discrimination in the area of education and vocational training**, adequate and non-discriminatory education being of key importance to the life of every person, and in particular the inclusion of persons with disabilities in all avenues of societal life. The principal purpose of post-legislative scrutiny is to check **whether and to what extent laws produce the expected outcomes, and if not, why not.**

Collocutors are of the opinion that a sound legislative framework has been established in Montenegro for the protection of persons with disabilities against discrimination in the areas of education and vocational training, so that **the key problem lies not in the laws but in their implementation and/or very often the lack of sufficient resources for their implementation.** A point often highlighted was the **lack of constant monitoring and of a comprehensive evaluation of educational curricula**, while there still remained numerous factors that contributed to persons with disabilities being exposed to risks or becoming victims of discrimination in education: **the uneven coverage of children with disabilities in inclusive education; architectural inaccessibility of educational facilities; inadequately outfitted educational institutions; insufficient specialization of teaching staff; peer prejudices towards pupils with disabilities; persons with disabilities are themselves insufficiently informed and motivated to participate in the educational process.**

The positions advanced by the collocutors indicated that the realization of all the aspects of the Law on the Prohibition of Discrimination of Persons with Disabilities, including in particular in the area of education and vocational training, still posed a challenge for Montenegrin state institutions, as well as that it **called for better coordination and communication between all the relevant institutions in respect of planning and the implementation of planning documents and generally of uniform standards for the implementation of legal provisions.** The unanimous assessment was that persons with disabilities **continued to be one of the most vulnerable categories of society, one confronted with a multitude of problems and**

obstacles in exercising its rights and equality. On the other hand, the Protector of Human Rights and Freedoms of Montenegro pointed out the very small number of initiated judicial proceedings for the protection of persons with disabilities against discrimination, indicating that **in all probability they are inadequately informed of their rights and available protection mechanisms.**

The Committee on Human Rights and Freedoms of the Parliament of Montenegro encourages the competent state authorities to take measures in cooperation with the civil society and with the support of the international community for the timely and efficient implementation of the following recommendations arising within the framework of the post-legislative evaluation process of Article 21 of the Law on the Prohibition of Discrimination against Persons with Disabilities, which will also contribute both to Montenegro successfully traversing the path towards European integration and a better life for all its citizens:

Legal and institutional framework:

- Promote the legal and institutional framework with a view to the full implementation of the principle of prohibition of discrimination of persons with disabilities in the area of education and vocational training, by giving effect to the recommendations from the Analysis of the Compliance of Montenegrin Legislation with the Law on the Prohibition of Discrimination against Persons with Disabilities and the UN Convention on the Rights of Persons with Disabilities and fully implementing laws governing this matter in order to eliminate any discriminatory procedures in the exercise of the right to education and developing an individualized approach within the education process;
- Promote the system of collection and exchange of information and data on the number of persons with disabilities and thus ascertain the exact number of children within and outside the educational system, namely develop a comprehensive database on children and adults with disabilities in the education system;
- Improve cross- sector coordination and communication between all institutions and bodies within the system to render it functional and efficient;

Implementation, monitoring and evaluation:

- Undertake all necessary measures to ensure unhindered access to schools/colleges for persons with disabilities from the earliest age, carrying out reasonable adaptations and extending the necessary support aimed at securing equality and full inclusion;
- Promote the system of monitoring and evaluating the quality of pedagogical services, i.e. of the way IDEPs /individualized development and educational plans/are prepared and delivered, assessing the quality of delivery of adopted curricula and the manner of their evaluation;
- Provide conditions for the implementation of proposed educational programs so as to address the problem of educational institutions without disability accommodation, the lack of equipment, textbooks and teaching aids, as well as that of the shortage of competent and trained staff (e.g. lack of teaching assistants), and to avoid the problem of “improvisation” with parents and teachers;

- Promote the work of commissions for the referral of children with special educational needs, so as to standardize the practice and equalize the criteria;
- Secure sufficient funds for all planned activities and measures (allocation of budgetary resources for the rights of minorities and planning of international development aid through support programs and development projects);
- Take all necessary measures for gifted persons with disabilities to be recognized in the educational system, and implement all measures and activities to extend them the necessary support ensuring equality and full inclusion in school competitions;

Raising awareness

- Continuously implement inclusive activities fostering equality, diversity, non-discrimination (workshops, peer experience and support and similar);
- Continuously work on sensitizing the teaching staff, assuring special emphasis on work with future teaching staff.

Chapter I: Implementation of the Law – Key Findings from Reports and Analyses

Of the total number of inhabitants in Montenegro, 11% (68,064) persons have difficulties in performing everyday activities due to long-term illness, disability or old age, as shown by data from the 2011 census¹.

Children with special education needs enrol in mainstream preschool institutions or schools, and are delivered specially adapted curricula. The Ministry of Education collects **data on children with special educational needs** on the basis of several criteria: developmental impairment and difficulties, individual developmental and education plans (IDEP), referral (orientation) options and similar. In order to ensure more efficient data collection, instructions have been drawn up defining record-keeping criteria. As well, the Ministry of Education maintains records on the basis of submitted referral decisions.

Table 1- Number of children with referral decisions by education level

Education level	School year 2016/2017	School year 2017/2018	School year 2018/2019
Preschool	351	357	357
Primary	1095	1241	1376
Secondary	323	444	496
Total	1769	2042	2229

Source: Ministry of Education of Montenegro²

Special schools have been transformed into resource centres, which, *inter alia*, extend support to mainstream schools and teachers in educating children with special educational needs. In the education system a number of children continue to be educated in resource centres or are resident in them. The decrease in their number is not significant, but still points to the commitment for all children to be included in mainstream schools.

¹ Statistical Office, <https://www.monstat.org/cg/page.php?id=387&pageid=322>

² Ministry of Education of Montenegro, <http://www.mps.gov.me/rubrike/obrazovanje-djece-sa-posebnim-potrebama/197533/INFORMACIJA-o-angazovanju-asistenata-u-nastavi.html>

Table 2 – Number of children in resource centres

Resource centre	School year 2016/2017	School year 2017/2018	School year 2018/2019
JU „Dr Peruta Ivanović“, Kotor	122	139	131
JU „Podgorica“, Podgorica	63	52	52
JU „1. Jun“, Podgorica	102	90	91
TOTAL	287	281	274

Source: Montenegro Education Information System³

As regards the capacities of key institutions for the implementation of this law, the Ministry of Human and Minority Rights (MHMR) and the Protector of Human Rights and Freedoms (the Institution of Ombudsman), it has been established on the basis of numerous reports and analyses that they need to be additionally enhanced.

In its regular annual reports the MHMR has been pointing out the problem of understaffing, i.e. the need to hire additional professionally qualified staff.⁴ The report of the expert mission underlines that all employed with the MHMR should receive basic human rights training encompassing relevant international treaties and commitments, European standards stemming from legislation of the EU and the Council of Europe, principles of interpretation and basic concepts.⁵ The Protector has a very broad mandate in terms of operation and competences; however, fulfilling his mandate in this respect poses a challenge given the resources and the capacities of the institution. International organisations are agreed that the allocated financial resources are insufficient for the work of the Protector, namely to enable him to chose his own activities and priorities. In reports on his work, the Protector has been drawing attention to the shortage of funds, but also to the manner of their disbursement, as these are resources with a strictly dedicated purpose.⁶

Bearing in mind the obligation to meet the deadlines set in the Action Plan for negotiating Chapter 19 (Social policy and employment) and the Action Plan for negotiating Chapter 23 (Judiciary and fundamental rights), as well as the need for alignment with European law and international treaties and conventions, the Law on the Prohibition of Discrimination against Persons with Disabilities was adopted.

³ Ministry of Education of Montenegro, <http://www.mps.gov.me/rubrike/obrazovanje-djece-sa-posebnim-potrebama/197533/INFORMACIJA-o-angazovanju-asistenata-u-nastavi.html>

⁴ Report of the Ministry of Human and Minority Rights on the Work and Situation in Administrative Areas for 2019, available at: <https://www.mmp.gov.me>

⁵ Peer review mission on the capacity of the Ministry of Human Rights, Podgorica, 18-21. April 2016. Peer Assessment Report, Ivana Roagna, May 2016, <https://goo.gl/vypj6j>

⁶ Report on the work of the Protector of Human Rights and Freedoms of Montenegro for 2019, available at: https://www.ombudsman.co.me/docs/1590478014_www-final--05---izvjestaj-o-radu-za-2019.pdf

Reports on the Implementation of the Action Plan for the Implementation of the Strategy for the Protection of Persons with Disabilities against Discrimination and for the Promotion of Equality for the 2017-2021 period⁷

The Report on the Implementation of the Action Plan for 2017 and 2018, which the government of Montenegro adopted in the first quarter of 2019, shows that of the total of 61 activities, 46 activities were realized, 1 activity was partly realized and 14 activities not at all. According to the Report on the Implementation of Anti-discriminatory Measures in the Field of Education and Vocational Training, all activities have been implemented. In particular, legislation governing all education levels was improved by the introduction of anti-discriminatory provisions and the promotion of equality. However, the **Alternative Report on the Implementation of the Action Plan for the Implementation of the Strategy for the Protection of Persons with Disabilities against Discrimination and for the Promotion of Equality for the 2017-2021 period⁸** drawn up by the Association of Youth with Disabilities of Montenegro and the Centre for Development of Non-Governmental Organizations for 2017 and 2018 states that educational area activities have been carried out only partially. To wit, the Report does not indicate what specifically has been amended in the listed laws, no reference⁷ has been made to the recommendations given by the UN committee, nor does it say what particular steps have been taken to improve the inclusiveness of the educational process, primarily in respect of the accessibility of educational institutions and of the curricula, i.e. the teaching plan and process, what specific measures taken to foster equality of opportunity. Thus, laws governing the area of education are still only partially aligned with the Convention, and, contrary to the Convention, provide for a commission to decide on educational referrals on the basis of its assessment, and also the segregation and grouping of children with disabilities, and integration in practice. As well, while the planned indicators feature in the official Report, there is no reporting on their realization, despite the assessment that the planned measure/activity has been implemented.

Report on the Implementation of the Montenegro Inclusive Education Strategy (2019-2025) for 2019.⁹

In view of the fact that an educational system is in question, a large number of activities are being implemented continuously, and the same goes for the implementation of the action plan. Under way is the implementation of 25 activities (81%), while six activities (19%) have not been carried out. As stated in the report, for its full implementation it is of the essence to overcome the challenges evident in understanding and accepting the concept of inclusiveness, the perception of the needs of children and families in all departments, to adopt an approach and a professional stance based on the human rights model, to secure professional resources and services, primarily in the area of the early development of these children, ensuring the satisfaction of and support for the psychosocial needs of families. A particular challenge is the still featuring medical model in the system of services at the local community level in all sectors. Namely, abandoning the same is

⁷ Reports on the Implementation of the Action Plan for the Implementation of the Strategy for the Protection of Persons with Disabilities against Discrimination and the Promotion of Equality for the 2017-2021 period, available at: www.mmp.gov.me/biblioteka/strategije

⁸ Vujačić, M, Alternative Report on the Implementation of the Action Plan for the Implementation of the Strategy for the Protection of Persons with Disabilities against Discrimination and the Promotion of Equality for the 2017-2021 period, Association of Youth with Disabilities of Montenegro, Podgorica, 2018, available at: <http://umhcg.com/publikacije/>

⁹ Report on the Implementation of the Inclusive Education Strategy in Montenegro (2019-2025) for 2019, available at: <http://www.gsv.gov.me/biblioteka/izvjestaji>

difficult, resulting in failure to implement activities of early identification and treatment of children and cooperation with other support areas and services.

Report on the Work of the Protector of Human Rights and Freedoms of Montenegro for 2019¹⁰

According to the structure of cases before the Protector in 2019, disability featured as the personal characteristic discriminated against in the largest number of cases, 24 (17 cases in 2018). Twenty-three cases were concluded, while one was carried over to 2020. As stated in the Report, although certain legal prerequisites for exercising their rights had been created and the visibility of persons with disability heightened, they nevertheless remained marginalized, prevented from participating in societal life with full capacity and on an equal footing with others, from living independent lives, getting an education and earning a living by doing a job of their own free choice or one they accepted on the labour market. Particularly worrisome is the still prevailing medical and functional model approach to disability. The Protector reminded that Montenegro had still not adopted an action plan for the implementation of the recommendations of the UN Committee on the Rights of Persons with Disabilities, so that the progress achieved was not sufficient from the standpoint of alignment of legislation with the UN Convention on the Rights of Persons with Disabilities either. As well, the Report emphasizes that the implementation of anti-discriminatory measures and activities from strategic documents as well as of the legal framework requires earmarking an adequate budget with an elaborate oversight mechanism to monitor their execution. A unified register of persons with disabilities is necessary both for policy planning in this field as well as for assessing the needs, monitoring the living standards and the overall conditions of life of persons with disabilities.

Analysis of Compliance of Montenegrin Legislation with the Law on the Prohibition of Discrimination against Persons with Disabilities and the UN Convention on the Rights of Persons with Disabilities, with Recommendations for Harmonization

It is the general assessment that the legislation of Montenegro is **basically harmonized with** the standards of the Law and the Convention. The General Law on Education is partially harmonized with the standards of the Convention. The Law on Preschool Education, the Law on Primary Education, the Law on High Schools, the Law on Vocational Education and the Law on Higher Education have for the most part been harmonized with the Law and the Convention. The Law on the Education of Children with Special Education Needs has been harmonized with the standards of the Law and the Convention. The Analysis states that further work is necessary to fully align the legislative framework with the UN Convention by amending a number of the provisions of the law. The previous period has seen a perceptible improvement in the implementation of inclusive education. Despite evident progress, there is much room for improvement. Schools need to be empowered in terms of initiative and autonomy in applying inclusive school policies. Teachers should upgrade their knowledge of specific individual developmental difficulties with a view to the individualization of the teaching process. Architectural barriers have for the most part not been overcome nor have other adjustments to enable accessibility been made. Pupil support in the form of assisted instruction has not been fully systematized and standardized. Shortcomings in

¹⁰ Report on the Work of the Protector of Human Rights and Freedoms of Montenegro for 2019, available at: https://www.ombudsman.co.me/docs/1590478014_www-final--05---izvjestaj-o-radu-za-2019.pdf

terms of resources and adequate staffing for an inclusive process have been observed in institutions of higher learning.

Recommendations for harmonization

First and foremost, Article 2 of the General Law on Education needs to be amended, i.e. the objective of education directly correlated with the creation of opportunities for the all-round education of individuals irrespective of their disability, account particularly being taken of the fact that it is precisely in this area that persons with disabilities have traditionally been discriminated against, that the education of children with disabilities is regulated by a special law and also that this law explicitly recognizes it as an activity in the public interest, as well as that the legal system in this area reflects the idea of the inclusion of children with disabilities in educational processes.

As well, Article 9 of the General Law should be amended so as to specifically include disability in the list of personal characteristics in respect of which equality in education and upbringing should be ensured, for the same reasons as those given in connection with the need to amend Article 2 of this Law.

Following that and in order to harmonize special laws with the basic law in this area, it is necessary to amend the relevant provisions prescribing the goals of upbringing and education in the Law on Preschool Education, the Law on Primary Education, the Law on High Schools, the Law on Vocational Education and the Law on Higher Education by directly correlating the development of the personality of the individual in educational processes with persons with disability, which pursuant to the first recommendation should also be provided for under the General Law.

Special attention should be devoted to the issue of terminology used in this field. It is stated in principle that it is not justified to designate persons with disabilities as persons with special needs because these persons have needs that are identical to the needs of persons without disabilities, but which persons with disabilities satisfy in a specific way. This position is reflected in the provisions of the Law and the Convention. To that effect, the terminology used in practically all legal texts in this area should be harmonized with the standards of the Law and the Convention.

(Analysis of Compliance of Montenegrin Legislation with the Law on the Prohibition of Discrimination against Persons with Disabilities and the UN Convention on the Rights of Persons with Disabilities, with Recommendations for Harmonization)

The European Commission Montenegro 2019 Report¹¹ states that little progress was made on the rights of persons with disabilities, including on legislative alignment with the UN Convention on the Rights of Persons with Disabilities. Montenegro is yet to adopt an action plan to address the recommendations from the UN Committee on Rights of Persons with Disabilities. De-

¹¹ European Commission Montenegro 2019 Report available at: <https://kei.gov.me/biblioteka/izvjestaji>

institutionalisation of persons with disabilities and the adaptation of public buildings to ensure access to persons with disabilities is progressing slowly. Further efforts are needed to implement the strategies on mental health and de-institutionalisation of mental health patients, and relevant community-based services need to be developed. Likewise, Montenegro needs to further improve the consultation mechanisms for persons with disabilities and their representative organisations.

National Report on the Human Rights Situation in Montenegro under the UN Universal Periodic Review is the result of national consultations in which state bodies participated (ministries and administration bodies, the judiciary and the prosecutor's office), the institution of the Ombudsman, non-governmental organizations and the UN system in Montenegro.¹² As stated in the Report, the educational system applies inclusive principles, primarily the right of the child to grow up in the primary family and be educated within the mainstream system. Children with special educational needs are prevalently enrolled in mainstream schools. An individual developmental-educational program is developed for every child. In order to promote non-discrimination and foster an inclusive climate and culture in schools, a „Development of Non-discriminating School Policy, Culture and Practice” program package is under way. All activities have been undertaken to implement the 14 recommendations from the third UPR cycle on combating discrimination, which will contribute to strengthening the legislative and institutional frameworks in this area.

Montenegrin Alternative Report on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities¹³ of the informal coalition of organizations of persons with disabilities stresses that at the policy and strategic framework levels so-called inclusive education has been practiced in Montenegro for 15 years now. However, in practice the integration and segregation of children and youth with disabilities, namely the functional model approach to disability is still in evidence. The results of the implementation of “inclusive” education are limited, with the greatest progress being the number of children involved in this process. However, no publicized and quantifiable qualitative effects of “inclusive” education have been presented. In view of the fact that there exists no data on the number of children with disabilities aged between 3 and 6, there is no data either on the number, i.e. percentage of children with disabilities who are not included in the process of preschool, primary and secondary education, nor on the number of adults with disabilities who have not pursued further higher education. Individualized development and educational plans adopted for children who have passed through the referral process do not entail reasonable accommodation, which is not practiced in the educational process at all, precisely because it is not understood, just like in other areas, so that in practice reasonable accommodation most frequently means technical adjustments which do not require the adaptation of schools and of all their components, the provision of accessible

¹² The Universal Periodic Review is a new mechanism for reviewing the observance of human rights in UN member states, with which the Human Rights Council was mandated under UN General Assembly Resolution 60/251 of 15 March 2006. The Human Rights Council undertakes the Universal Periodic Review by considering three basic documents (Report on the human rights situation of the state under review, Report of the Office of the High Commissioner for Human Rights based on reports of UN treaty bodies and information from the UN Special Procedures, Report of the Office of the UN High Commissioner for Human Rights based on information from non-governmental organizations and other stakeholders) and through interactive dialogue with the relevant state delegation. The review is conducted at meetings of the Human Rights Council Working Group.

¹³ Vujačić, M, Montenegrin Alternative Report on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities in Montenegro, Association of Youth with Disabilities of Montenegro, Podgorica, 2017, available at: <http://umhcg.com/publikacije/>

literature, curricula and syllabi, making possible the use of one's native language and script, the procurement of all necessary information communication technologies and of services, including assistive devices. In practice all of these are replaced by teaching assistants.

Analysis of the Cross-Sector System Support for Children with Disabilities in Montenegro¹⁴

Consolidated statistical data on children with disabilities, better cross-sector cooperation, improvement of the quality of inclusive education, health care and social welfare of children with disabilities and their access to the justice system – are just some of the recommendations of the Analysis of the Cross-Sector System Support for Children with Disabilities in Montenegro, prepared by UNICEF, at the request of the Council for Child Rights. In this analysis, UNICEF underlines that there is room for improving legislation, **particularly in the part concerning anti-discrimination and education**, because the existence of specific legislation concerning the inclusion of children with special education needs is not in the spirit of inclusive education. In that connection a simplified strategic and legal framework should be put in place to ensure better coordination, accountability and the monitoring of end results. The analysis acknowledges the challenge faced by local self-governments in respect of the provision of community-based services, as the jurisdictional delimitation is unclear. This is of particular importance for the education sector, bearing in mind the fact that local commissions issue decisions on the referral of children. As well, one of the recommendations is to set up municipal level centres where children with disabilities and their families could obtain all necessary information. A consolidated database on children with disabilities is the basic step towards the further modernization of and interconnectivity between the existing systems, for the exact number of children with disabilities in Montenegro should be known. Continued investment in the promotion of cross-sector cooperation in children's early development and early education is necessary to enable children with disabilities to attend schools in keeping with the UN Convention on the Rights of the Child. As well, the Analysis stresses that further investment is required in the professional qualification and improved capacity of staff working with children and youth with disabilities.

In respect of the education of persons with disabilities, the analysis "**The Status of Persons with Disabilities in Montenegro: Identification of Practices and Discrimination Patterns**"¹⁵ identifies cross-sector cooperation as the major problem. Namely, there is poor coordination and poor cooperation between the social welfare, health and educational systems. That children fall within a specific category is recognized relatively late. There is no cooperation at all between the Health Centre and the Social Work Centre. Each maintain their own records, there is no unified database. The evaluation issue is also criticized.

¹⁴ UNICEF: Analysis of the Cross-Sector System Support for Children with Disabilities in Montenegro, available at: <https://www.unicef.org/montenegro/price/jednake-%C5%A1anse-za-svako-dijete>

¹⁵ Bešić, M, The Status of Persons with Disabilities in Montenegro: Identification of Practices and Discrimination Patterns, CEDEM; Podgorica 2019, available at: <https://bit.ly/2IDU2VS>

Chapter II: Implementation of the Law – Opinions and Assessments of Stakeholders

From the standpoint of the practical implementation of the **Law on the Prohibition of Discrimination against Persons with Disabilities**, with emphasis on **Article 21** of the Law, ***Discrimination in the area of education and vocational training***, eight interviews were conducted and two focus groups organized with representatives of relevant state institutions and civil society organizations. The consultants' aim was to employ investigative methods to review the efficiency of the application of legal provisions and institutional mechanisms which primarily concerned:

- the selection of educational programs and enrolment in, access to and stay in educational institutions, in keeping with the possibilities of persons with disabilities,
- following of lessons and testing of knowledge, as well as participation in other upbringing and educational activities, including participation in extracurricular activities and competitions.

The discussion focused on: 1) assessment of the effects, both positive and negative ones, resulting from the application of the Law 2) assessment of the attainment of the basic objective of the Law defined in its adoption stage; 3) identification of problems associated with the implementation of the Law and possibilities to overcome the observed shortcomings; 4) consideration of possible ways of improving or upgrading this Law, as well as on 5) perception of additional challenges related to the implementation of the Law.

Problems identified in the application of the Law on the Prohibition of Discrimination against Persons with Disabilities in the area of education and vocational training:

- Lack of a consolidated database on persons with disabilities;
- Inaccessibility of school buildings;
- No transportation to school provided for children with disabilities;
- Differently equipped educational institutions;
- Availability of resources and staff of educational institutions for work with children with disabilities;
- Work of the Commission for the Referral of Children With Special Education Needs to programs within the education system
- Early intervention system for children, with the exception of Podgorica;
- The role of teaching assistants is not clearly defined, with teaching assistants often providing services other than those prescribed under the law;
- No use of assertive technologies in the education process (accessibility of literature), absence of standardization of electronic documents for persons with disabilities;
- Frequent changes of teaching aids, textbooks, insufficient standardization levels;
- Lack of cross-sector cooperation and communication at the national and local levels,
- Discrimination.

Although the Analysis of Compliance of Montenegrin Legislation with the Law on the Prohibition of Discrimination against Persons with Disabilities and the UN Convention on the Rights of Persons with Disabilities pointed to the need to amend a number of laws in the area of education and vocational training, all collocutors stressed **that the key problem did not lie in the laws but in their implementation and/or often the lack of resources for their implementation.** Collocutors are of the opinion that a sound legislative framework for the protection of persons with disabilities is in place in Montenegro, but the implementation of regulations in this area is wanting. Additionally, as particularly emphasized, a cause for concern is that frequently no dedicated allocations exist in the budgets of the relevant state institutions for the implementation of the law, policies and programs so as to ensure the exercise of the rights of persons with disabilities.

The positions voiced by the participants demonstrate that the realization of all aspects of the Law on the Prohibition of Discrimination against Persons with Disabilities, in particular in the area of education and vocational training, still poses a challenge for the institutions of the state of Montenegro, as well as that **better inter-institutional coordination and communication is needed in respect of planning and implementing planning documents and generally uniform standards for the application of legal provisions.** A key problem that was identified concerned linking the Law on the Prohibition of Discrimination against Persons with Disabilities with other organic legislation, and the need for prohibition of discrimination to be recognized as such in all the most important laws.

The unanimous assessment was that persons with disabilities were socially marginalized in Montenegro, despite the publicly projected impression that their problems were being resolved. In the assessment of relevant organizations, **PwD continue to constitute one of the most vulnerable categories of society, one confronted with numerous problems and obstacles in exercising their rights and equality.** Their discriminatory treatment is attributable to the inaccessibility of physical environments, information, communication and traffic, inadequate employment policy, a lack of support services and the insufficient application of the concept of affirmative action and reasonable accommodation. Therefore, despite the joint efforts of the competent bodies and civil society organizations, further and more efficient work is required in this area to enable PwD to effectively satisfy all health, educational, social and other needs.

On the other hand, the Protector of Human Rights and Freedoms of Montenegro stresses the fact that there are a very small number of initiated judicial proceedings for the protection of persons with disability against discrimination, indicating the possible **lack of information about their rights and available protection mechanisms.**

A particular challenge is the fact that **a consolidated database on children and adults with disabilities has still not been established in the education system.** In this connection it was unanimously concluded that work must be done to improve the system of collection and exchange of information and data on the number of persons with disabilities and thus ascertain the exact number of children within and outside the educational system, namely develop a comprehensive database on children and adults with disabilities in the education system.

Participants in the focus groups agreed that it was necessary to work on changing the angle of approach to persons with disabilities in respect of education and vocational training, along the

lines of affirmative action on the part of all institutions in the system so as to foster the capabilities, opportunities and talents a person with disability is endowed with. Despite all existing mechanisms, participants feel that an affirmative approach to persons with disabilities is still lacking and that it depends on the personal initiative of individuals within the system rather than being of systematic nature.

A general observation is that there is **perceptible progress in the implementation of inclusive education and the promotion of the legislative framework with the aim of ensuring equal educational opportunities for all persons with developmental impairment and difficulties, i.e. persons with disabilities**. Let us recall that the fundamental goal of inclusive education is to provide equal opportunities to all children for their upbringing and education, to provide adequate conditions enabling optimal development and the timely referral to and inclusion in an adequate education program. That calls for the full inclusion of children with special educational needs in tutoring groups in preschool institutions and classes in mainstream schools or in special groups or school classes with modified curriculum delivery and the provision of additional professional assistance by the educator or teacher, and/or additional efforts of a specialist together with the educator or teacher and with parent involvement. Despite the existence of a generally positive attitude to inclusive education, introduction of which, as observed, had significantly improved the quality of education of persons with disabilities in Montenegro, primarily their visibility, it was also pointed out that significant problems were encountered by children with disability during their schooling.

The initial problem faced by persons with disabilities in Montenegro is the physical **inaccessibility of school buildings**, as well as impeded mobility inside educational institutions. In addition to inaccessibility another observed problem was that of **educational institutions without disability accommodation**. Generally observed, the problem of architectural barriers in schools is very pronounced. Most school buildings and classroom devices are not adapted to the needs of CwD. A number of primary and secondary schools have adapted their accesses and entrances and toilet sections, but not all of them. Most faculties are only partially or not at all adapted to the needs of PwD. According to our collocutors, the Office of the Ombudsman and CSOs had repeatedly drawn attention to the inconsistent application of the Law on Spatial Development and Building Construction and the absence of control with respect to PwD rights. Hence, as a direct consequence of the failure to resolve these issues - the lack of access ramps and elevators in educational establishments, unadjusted building sections and the existence of other barriers - PwD are prevented from pursuing further education of their choice.

A significant and no less essential problem is the **lack of transportation services to school for children with disabilities** who have to be accompanied by or ride to school by car with a parent.

In the view of the interviewees, adequate **resourcing and staffing of schools working with children with disabilities** poses perhaps the greatest challenge, the impression being that the inclusive process has fallen short of the aim in precisely education. Not all schools at all educational levels in Montenegro have as yet been adapted to the needs of persons with disabilities. Namely, in addition to addressing staffing and resourcing issues, another problem is dispelling stereotypes which still feature in the school setting.

Inadequately adapted resources and staff in educational institutions also entail **unmodified literature and curricula**, and consequently the impossibility of following instruction, often resulting in pupils dropping out of further education. Even though a separate individualized development and educational plan is developed for each person with disability, the focus group participants reported cases of programs failing sufficiently to encourage practical experiences and the emancipation of the person in question.

The next problem indicated by the collocutors was the problem of **the inadequate training levels of the teaching staff for work with children with disabilities** but also **the problem of insufficient additional personnel** to extend adequate pedagogical and medical assistance to children with disabilities. In other words, the existing teaching staff generally lack sufficient knowledge and skills to adequately implement inclusive educational practices. Inadequate staff training is also reflected in their overindulgent attitudes towards pupils with disabilities, which precludes children from giving expression to their capabilities and potential.

According to some of the collocutors, a significant problem at this point is **the role of teaching assistants**, namely not only the shortage of such personnel in the system, but also the standardization of their work. Although the law specifies that the teaching assistant **provides technical assistance** to children during instruction in accordance with their individualized development and educational plans (educational and developmental needs and goals assessment for the child in question) and class schedule¹⁶, occasionally that is not the case. Namely there have been cases of the scope of support extended to children by teaching assistants exceeding the technical level in practice. As well, attention was drawn to the fact that the responsible services did not ensure an adequate number of teaching assistants relative to the number of commission decisions proposing this type of support. If in the context of inclusive education a commission orders the creation of specific conditions for curriculum delivery in keeping with the individual needs of the child, the educational institution in question and the responsible Ministry must comply with its decision for otherwise the work and engagement of the commission would be pointless, and not infrequently the best interests of the child might be jeopardized. In situations when recruiting a teaching assistant in accordance with the commission's decision is not possible, educational institutions improvise and seek various ways to help the pupil participate in the regular education process, either by having parents serve as assistants to their children, or the professional pedagogical and psychological service working extra or redeploying already recruited assistants to help more children for a number of hours. In the view of all the collocutors, none of these makeshift arrangements were in the child's interest nor could ensure efficient inclusion.

As regards the referral of children with disabilities to the mainstream educational process, an evident problem regarding PwDs and their families is **the issuance of referral decisions, in particular the work of the Commission for the Referral of Children with Disabilities in the Education System**. In the words of the collocutors, strengthening the capacity of the Referral Commission and the further training of its members are necessary for the application of the new

¹⁶ Article 30a of the Law on the Education of Children with Special Educational Needs, „Official Gazette of the Republic of Montenegro“, no. 80/04 and „Official Gazette of Montenegro“, nos. 45/10 and 47/17.

concept upon the social model principle rather than a medical one. Collocutors also reported cases of referral decisions having been issued for children but without observing the principle of inclusive education. Evidently there is insufficient knowledge of and inadequate application of the current Law on the Education of Children with Special Educational Needs and the Rulebook on the Manner, Requirements and Procedure for the Referral of Children with Special Educational Needs. Another observation was that the scope and workload of the commissions in their work to date have not been uniform.

On the subject of the work of commission for the referral of children with special educational needs, the Office of the Ombudsman drew attention to the **problem of competence**, as the commissions are set up at the local level and the resources for implementing inclusion, and in fact recruiting teaching assistants, are within the remit of educational institutions financed from the national budget. Consequently, there have been cases of commissions for the referral of children with special educational needs recommending to the school to provide a teaching assistant in their referral decision which became enforceable in accordance with procedural rules but often remained unexecuted because the competent Ministry had a different interpretation of the needs of the child in the specific instance. Failure to comply with an enforceable decision, on the other hand, provides parents and legal representatives with the opportunity to seek redress i.e. the protection of their guaranteed rights before a court of law. As well, according to the Office of the Ombudsman, in their complaints, parents of children who had been referred to the mainstream educational process for a modified curriculum, alleged lack of diligence of the commissions for the referral of children with special educational needs, the lack of teaching assistants, problems in the delivery of individualized curricula and the maladjustment of educational institutions to the individual needs of the pupils.

The impression is gained that no functional communication and coordination has been established between the competent commissions, educational institutions and the Ministry, with a view to gaining an insight into the needs of children and addressing problems in a timely fashion, which prompted the Ombudsman to issue a recommendation calling for the establishment of timely and constant communication between the commission, educational institutions and the responsible Ministry.

Obviously, parents and families constitute an essential element of the entire process. It is necessary to involve the parents of children with disabilities, who should be partners in conducting the educational process, and in parallel implement a parents empowerment program in order to encourage them to take part in assessments and decision-making affecting their children. Continuous training of both parents and children in the area of the rights and opportunities of PwD is necessary.

There is no sufficient media coverage and promotion of the need for educating children with developmental difficulties and generally persons with disabilities, which is necessary in order to dispel prejudices and stereotypes in this regard. Discrimination against children with disabilities within schools by professors, teachers, children, but also children's parents who are disability-free poses a particular challenge. In the opinion of all collocutors additional efforts should be invested and specific actions designed for the presentation by the media of institutions educating PwD, of

educational programs, positive schooling examples, and special shows and programs devoted to this topic should be produced. A component of the awareness raising campaign should be the constant education of the staff of the competent state authorities, local self-government bodies and the business sector about the rights and needs of children with disabilities.

Chapter III: Key Findings and Recommendations

A relatively good regulatory framework is in place in Montenegro for the education of persons with disabilities at all levels. However, further work is necessary to fully align legislation with international and EU human rights standards, including the prevention of discrimination against persons with disabilities in the area of education and vocational training. On the basis of regular annual reports of international institutions and organizations, as well as of the findings from interviews and focus groups, the implementation of legislation continues to be identified as a major challenge, with work also being required on the further capacity building of the competent institutions and on stepping up their cooperation and coordination. Constant monitoring and a comprehensive evaluation of educational programs is lacking. As well, it is necessary to secure sufficient budgetary allocations for the implementation of the inclusive education policy at all levels. Many factors still operate exposing persons with disabilities to risks or making them victims of discrimination in education: the uneven coverage of children with disabilities in inclusive education; architectural inaccessibility of educational facilities; insufficient specialization of teaching staff; peer prejudices towards pupils with disabilities; persons with disabilities are themselves insufficiently informed and motivated to participate in the educational process.

A major challenge is the implementation of the recommendations from the Analysis of Compliance of Montenegrin Legislation with the Law on the Prohibition of Discrimination against Persons with Disabilities and the UN Convention and the implementation of measures specified under the 2017-2021 Strategy for the Protection of Persons with Disabilities against Discrimination and for the Promotion of Equality, defined in the Action Plan (for 2017/2018, 2019/2020 and 2021). Despite all planned activities designed to prevent multiple discrimination, there is a perceptible absence of activities aimed at prohibiting multiple discrimination (discrimination on a number of different grounds), and a lack of understanding of the reasonable accommodation concept and the application of this concept in different settings. The implementation of the Strategy at local self-government level is still very limited. Only three action plans have been adopted for the implementation of the Strategy for the Protection of Persons with Disabilities against Discrimination and for the Promotion of Equality (Bijelo Polje, Tivat and Pljevlja).

Public opinion surveys and those of the level of awareness of discrimination and its manifestations conducted by the Ministry of Human and Minority Rights, as well as other surveys demonstrate that in the opinion of Montenegrin citizens persons with disabilities are at the top rung of the ladder of discrimination. The report on the Work of the Protector of Human Rights and Freedoms for 2019 states that the number of handled cases increased in relation to the previous year (in 2019 there were a total of 24 complaints¹⁷, while in 2018 there were 17 registered complaints), however the number of judicial proceedings for protection against discrimination on grounds of disability is evidently still very small, which attests to the lack of knowledge of the

¹⁷ According to data from the Report on the Work of the Protector of Human Rights and Freedoms of Montenegro for 2019, page 189 of the Report, 24 cases were pending, 23 concluded and one carried over to 2020.

rights and protection mechanisms against discrimination before competent bodies, particularly on the part of persons with disabilities who are discriminated against.

The Committee on Human Rights and Freedoms of the Parliament of Montenegro encourages the competent state authorities to take measures in cooperation with the civil society and with the support of the international community for the timely and efficient implementation of the following recommendations arising within the framework of the post-legislative evaluation process of Article 21 of the Law on the Prohibition of Discrimination against Persons with Disabilities, which will also contribute both to Montenegro successfully traversing the path towards European integration and a better life for all its citizens:

Legal and institutional framework:

- Promote the legal and institutional framework with a view to the full implementation of the principle of prohibition of discrimination of persons with disabilities in the area of education and vocational training, by giving effect to the recommendations from the Analysis of the Compliance of Montenegrin Legislation with the Law on the Prohibition of Discrimination against Persons with Disabilities and the UN Convention on the Rights of Persons with Disabilities and fully implementing laws governing this matter in order to eliminate any discriminatory procedures in the exercise of the right to education and developing an individualized approach within the education process;
- Promote the system of collection and exchange of information and data on the number of persons with disabilities and thus ascertain the exact number of children within and outside the educational system, namely develop a comprehensive database on children and adults with disabilities in the education system;
- Improve cross-sector coordination and communication between all institutions and bodies within the system to render it functional and efficient;

Implementation, monitoring and evaluation:

- Undertake all necessary measures to ensure unhindered access to schools/colleges for persons with disabilities from the earliest age, carrying out reasonable adaptations and extending the necessary support aimed at securing equality and full inclusion;
- Promote the system of monitoring and evaluating the quality of pedagogical services, i.e. of the way IDEPs /individualized development and educational plans/are prepared and delivered, assessing the quality of delivery of adopted curricula and the manner of their evaluation;
- Provide conditions for the implementation of proposed educational programs so as to address the problem of educational institutions without disability accommodation, the lack of equipment, textbooks and teaching aids, as well as that of the shortage of competent and trained staff (e.g. lack of teaching assistants), and to avoid the problem of “improvisation” with parents and teachers;

- Promote the work of commissions for the referral of children with special educational needs, so as to standardize the practice and equalize the criteria;
- Secure sufficient funds for all planned activities and measures (allocation of budgetary resources for the rights of minorities and planning of international development aid through support programs and development projects);
- Take all necessary measures for gifted persons with disabilities to be recognized in the educational system, and implement all measures and activities to extend them the necessary support ensuring equality and full inclusion in school competitions;

Raising awareness

- Continuously implement inclusive activities fostering equality, diversity, non-discrimination (workshops, peer experience and support and similar);
- Continuously work on sensitizing the teaching staff, assuring special emphasis on work with future teaching staff.

The Parliament of Montenegro

The Parliament of Montenegro is a unicameral parliament with 81 members. The Parliament takes its decisions with majority vote of attending MPs at a session attended by more than half the convocation, unless the Constitution stipulates otherwise. The term of office is four years long and can cease earlier, by disbanding the parliament or shortening the tenure. The MPs' primary role is to pass legislation in accordance to the citizens' best interests and needs. One of the key functions of the Parliament is to scrutinise the Government's work. The Parliament has got several instruments to exercise parliamentary scrutiny at its disposal.

The Parliament, as the highest legislative authority, enables citizens' active participation in the parliamentary life. Therefore, the Parliament's work is public and special attention is paid to its openness and accessibility. The principle of transparency is reflected in cooperation with the civil sector, the representatives of which can attend the sessions of the working parties, as well as in publication of relevant information and documents made through the Parliament's proceedings on the Parliament's web page, publication of strategic documents, annual and other activity reports, financial statements, newsletters and other publications, followed by direct TV broadcasting of parliamentary sessions and collective and individual visits of citizens.

The Human Rights and Gender Equality Network of Committees (HUGEN)

Westminster Foundation for Democracy (WFD) is a public body of the United Kingdom committed to supporting democracy and democratic processes around the globe. Working in more than 40 countries across the world, WFD has cooperated with parliaments, political parties, civil society organisations and electoral committees in order to help them become more just and inclusive, accountable and transparent in their work. Operating in the Western Balkans since 1992, WFD is in a good position to support the endeavours towards enhancing the rule of law, governance, gender equality as well as post-conflict reconciliation.

In the second half of 2019, WFD launched a 30-month programme implementation (April 2019-November 2021), aiming at the establishment of a network of parliamentary committees for human rights and gender equality in the Western Balkan region (HUGEN). The Programme is supported by the Norwegian Ministry of Foreign Affairs and includes the working parties from eight parliaments in the region of the Western Balkans. The Programme is implemented by the WFD regional office in Belgrade, in collaboration with local WFD offices in the region. Working across the Balkans, the Programme has been supporting the MPs and members of the parliaments' professional services in strengthening parliamentary cooperation in the region, supervisory and control capacities of the parliaments and improvement of the best standards' and practices' implementation in the area of human rights and gender equality.

